

5.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----

SENER PETROLEUM, INC.'s

DOCKET NO. 05-0221

Petition to Adjust the Zone Price
Adjustment for Zone 2 (Kauai) Effective
September 1-4, 2005 under Haw. Rev.
Stat. §486H-16

PROTECTIVE ORDER NO. 22028

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

Filed Sept. 14, 2005

At 1 o'clock P.m.

Karen Higash

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----

SETER PETROLEUM, INC.'s

Petition to Adjust the Zone Price
Adjustment for Zone 2 (Kauai) Effective
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DOCKET NO. 05-0221

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, Senter Petroleum, Inc. ("Petitioner"), has filed a Petition to Adjust the Zone Price Adjustment for Zone 2 (Kauai) Effective September 1-4, 2005;

WHEREAS, Petitioner maintains that disclosure of certain confidential information would cause irreparable damage to Petitioner's operations and competitiveness in the marketplace;

WHEREAS, Petitioner anticipates that during the course of this proceeding, information considered to be privileged or confidential by a party may be requested or filed;

WHEREAS, the Division of Consumer Advocacy ("Consumer Advocate") is ex officio a party to this proceeding pursuant to the Rules of Practice and Procedure before the Public Utilities Commission (the "Commission");

WHEREAS, the parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which any party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard in camera; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issue a protective order covering the confidential information identified in the course of the proceeding in connection with the Application as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by any party in this docket.
2. All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party or participant under the provisions of this protective order to the extent allowed by the Commission.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in Hawaii Revised Statutes ("HRS") § 92F-

3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. A party to this proceeding may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, financial, vendor, or bid information, including but not limited to cost support studies. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

Notwithstanding the above, and given the expedited nature that Petitioner's petition may be given, Petitioner has already provided or is in the process of providing information that it has identified as confidential to the Consumer Advocate and the Commission. Such previously, or to be submitted, confidential information includes confidential financial statements of Petitioner Subject to challenge pursuant to paragraph 24, this information shall be governed by and protected under this Protective Agreement.¹

9. With respect to any confidential information that is not under the control of the party claiming the information is confidential, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of

¹ By executing this Stipulation, the Consumer Advocate is not waiving its right to so challenge any claims of confidentiality.

confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a “qualified person” as defined in paragraph 12 below.

12. “Qualified person,” as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission in this proceeding;
- c. The Consumer Advocate, its staff, counsel, (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate in this proceeding;
- d. Petitioner, its officers and employees, its counsel (including employees directly employed by such counsel) and any consultants retained by Petitioner;
- e. Any other party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel),

and any consultants retained by it for this proceeding, to the extent allowed by the Commission;

- f. Any other person approved by the party asserting the claim of confidentiality; and
- g. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff and counsel, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings that contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order No._____.**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff and counsel shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER NO. _____ AND CONTAINS
DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT
IS NOT TO BE OPENED OR THE CONTENTS OF THIS**

motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may modify this protective order on the motion of any party, or on its own motion, upon reasonable notice to the parties and an opportunity for hearing.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts


embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives.

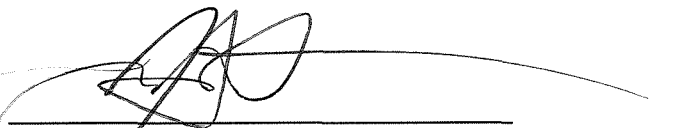
SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

DATED: Honolulu, Hawaii August 31, 2005.



KELLY G. LAPORTE
MARC E. ROUSSEAU
NEILL T. TSENG
Attorneys for Senter Petroleum, inc.



JON S. ITOMURA
Attorney for the
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____ issued by the Hawai'i Public Utilities Commission in Docket No. _____ on the _____ day of _____, 2005 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. _____ and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____, 20____.

Signature

Address

(____)_____
Telephone Number

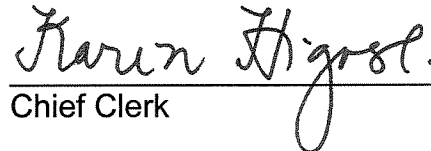
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Protective Order No. 22028, upon the following party (parties) by hand delivery or by mail, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS
P.O. Box 541
Honolulu, Hawaii 96809

KELLY G. LAPORTE
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Senter Petroleum, Inc.
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Honolulu, Hawaii 96813

Dated: SEP 14 2005



Chief Clerk